

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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SUMMER STEPHAN
DISTRICT ATTORNEY

April 4, 2018

Sheriff William Gore
San Diego County Sheriff
9621 Ridgehaven Court
San Diego, CA 92123

Chief of Police Walt Vasquez
La Mesa Police Department
8085 University Avenue
La Mesa, CA 91942

Chief of Police David Nisleit
San Diego Police Department
1401 Broadway
San Diego, CA 92101

**Re: Fatal shooting of Mr. Isais Raziel Ochoa-Bautista on August 24, 2017
by San Diego County Sheriff's Sergeant K. Murashige; La Mesa Police Officers
T. Persitza and J. Seydel; and San Diego Police Officer J. Wiese; San Diego County
Sheriff's Department Case No. 17144086; DA Special Operations Case No.
17-140PS; Deputy District Attorney assigned: Paul Reizen**

Dear Sheriff Gore, Chief Vasquez, and Chief Nisleit:

We have reviewed the reports and other materials compiled by the Sheriff's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Isais Raziel Ochoa-Bautista on August 24, 2017 by San Diego County Sheriff's Sergeant K. Murashige, La Mesa Police Officers T. Persitza and J. Seydel, and San Diego Police Officer J. Wiese. A District Attorney Investigator responded to the scene and was briefed by your deputies. This case was presented to the District Attorney's Office for review on December 22, 2017.

Summary

On August 24, 2017, Mr. Ochoa-Bautista, a passenger in a vehicle being pursued by multi-jurisdictional law-enforcement patrol units, fled the moving vehicle as it stopped at a dead-end street in Lemon Grove. Ochoa-Bautista ran up an embankment and positioned himself behind a cinderblock wall located near inhabited residences. Ochoa-Bautista fired rounds from his revolver and refused multiple orders to drop his gun. A police canine was deployed and bit Ochoa-Bautista. An arrest team approached to take Ochoa-Bautista into custody. Ochoa-Bautista fired another round and pointed his pistol toward the officers. The sergeant and officers returned fire. Ochoa-Bautista was struck multiple times. The incident was recorded on a police body-worn camera.

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Persons Involved

Mr. Ochoa-Bautista was 19 years old and armed with a .32 caliber Colt revolver. Sergeant K. Murashige was assigned to patrol duties and had been employed with the Sheriff's Department for 22 years. Officers T. Persitza and J. Seydel were both assigned to patrol and each had been employed by the La Mesa Police Department for one year. Officer J. Wiese was assigned as a canine handler in support of area patrol units and had been employed by the San Diego Police Department for 18 years.

Statement of Officer T. Persitza

At about 1:23 a.m., Officer T. Persitza saw an occupied Ford sedan in a parking lot of a closed commercial business in La Mesa. Persitza pulled behind the vehicle to determine what the driver and occupants were doing there at that late hour. The vehicle travelled away from the parking lot into the street before Persitza could approach and speak to the vehicle's occupants. The vehicle fled onto a freeway while Persitza pursued with lights and sirens. Persitza called for assistance and followed the vehicle from the streets of La Mesa to the freeway, and then to a condominium complex in Lemon Grove.

The vehicle arrived at the dead-end of the street. The driver and passengers fled the vehicle while it was still in gear. Both passengers ran to the west and the driver ran to the east. Officer Persitza lost sight of the driver.

While looking for the driver, Officer Persitza heard what sounded like a small caliber gunshot from the west. Persitza believed the officers were being shot at or an officer had fired their weapon. Officers were still arriving and forming a perimeter.

Officer Seydel yelled out commands to the suspect to surrender. Officer Persitza saw a light and occasionally the suspect's head and shoulders moving around behind a wall. The suspect was probably 30 to 40 yards away from Persitza. Persitza heard another gunshot from the suspect's location. The officers continued giving commands and setting up positions.

Officer Wiese arrived and discussed a tactical plan involving the use of Wiese's police canine. Officer Persitza could see the suspect in a seated or kneeling position. He saw a muzzle flash and it looked like the suspect shot towards the ground. This was the suspect's third shot. The suspect had the gun in his left hand. There was a sense of urgency. The officers were about 25 yards away from the suspect. Wiese released his police canine after the suspect was given multiple warnings to comply. The dog ran towards the suspect. Persitza did not see the police dog make contact with the suspect, but the suspect began screaming and fired another round. Persitza thought the suspect shot the dog.

Officer Wiese told the officers to get through the fence so they could start moving up on the suspect. During this time, Wiese yelled at the suspect repeatedly to come down the hill and bring the dog to him. They were about 20 to 25 yards away from the suspect. They started slowly moving up.

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The police dog was biting the suspect's right leg and the suspect was still screaming. Officer Persitza saw the suspect wave his pistol around. As the officers closed distance, the suspect moved the gun towards them two or three times. He was waving the gun. They were in the path of the firearm and the barrel was facing the entire group as they approached slowly. Persitza was afraid the suspect might shoot a round as he waved the gun past them. Persitza did not want to shoot and hoped the male would drop the gun. The officers continued their advance with the suspect yelling at them. Persitza got to the point where he thought the male was going to shoot them. Persitza began shouting commands because he feared they may be shot.

They were only 10 to 15 yards away, when the suspect shot another round and continued yelling. The police dog was not incapacitating the suspect, who was still waving the gun around. The suspect yelled something and then said, "I still have more bullets." Officer Persitza believed the suspect was going to shoot them if the officers got any closer. Persitza remembered hearing Officer Wiese saying something like, "We gotta do this," or "too close." Persitza could see Wiese drawing his weapon, around the time the suspect said he had more bullets. Persitza's stomach sank and he thought one of them was about to be shot and hurt or killed.

Officer Persitza aimed for the suspect's center mass and fired a round. He quickly assessed to see if the male was down, because he was trained to end the threat. Persitza was not the first person to shoot and he heard other shots being fired as he was shooting. Persitza saw the suspect reel backwards, but he then sat upright again. Persitza thought the shots were ineffective and he fired a second round, as other officers also shot. The suspect fell backwards. After he stopped moving, the officers approached and gained control of the suspect.

Officer Seydel kicked or pulled the gun out of the suspect's hand. The officers then rolled the suspect over and handcuffed him. Seydel began rendering aid but could not feel a pulse. They held their positions and waited for paramedics.

Statement of Sergeant K. Murashige

Sergeant Murashige responded to a radio call requesting assistance. While on scene, Murashige heard a gunshot coming from an uphill open area in the direction the two passengers fled. The gunshot sounded close. Murashige believed one of the suspects that fled from the vehicle was hiding in the field and had shot at the officers. Murashige used his flashlight to illuminate the area and saw someone hiding behind a bush in the area above them.

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Two officers closer to the suspect gave commands to the suspect to show his hands and surrender. The suspect replied, but Sergeant Murashige could not understand what he was saying. The officers said the suspect was refusing to comply, despite multiple officer commands.

The suspect fired another shot. Sergeant Murashige believed the suspect was shooting at the officers and the situation appeared to be at a stalemate. The suspect remained behind the bushes and at points appeared to be holding up a cellphone light. ASTREA, the Sheriff's helicopter, confirmed the suspect had something in his hand, but was unable to determine what the object was. The suspect continued to ignore officer orders.

Officer Wiese arrived with his canine. Wiese gave commands and told the suspect the dog would be released if the suspect did not comply with their instructions. Sergeant Murashige heard another gun shot. The police dog was then released.

The suspect yelled he would give up, but Sergeant Murashige thought the suspect was attempting to get away. Officer Wiese yelled for the suspect to come to their location. The suspect sounded like he had been bitten and was in pain. Murashige then heard another gunshot followed by more struggling and rustling. Murashige believed the suspect was shooting at the police dog or at him and the other officers.

The group made a decision to form a team and confront the suspect. Sergeant Murashige took the front and slowly made the approach towards the suspect's location with the team. Murashige could not see the suspect as they approached, but eventually observed the suspect sitting on the ground. It appeared the police dog had contact with the suspect's leg. The suspect was thrashing around and had a pistol in his left hand. Someone gave a command to the suspect to drop the gun. At this point, Murashige crouched down as he was approximately 20 feet away from the suspect and without cover.

The suspect struggled with the police dog with the gun still in his left hand. The suspect leaned to his left and fired a shot from the handgun. The gunshot appeared to be directed to the suspect's left, which was to the right of Sergeant Murashige and the officers. Murashige recalled hearing Officer Wiese telling him to shoot the suspect. Murashige hesitated because he was waiting to see if the suspect pointed the handgun at them. The suspect waved the handgun around and pointed it downward. The suspect fired another shot.

Sergeant Murashige took aim at the suspect's upper chest area and fired one round from his rifle. The other officers fired at the suspect at the same time. Shots hit the suspect and he fell backwards. The suspect was still holding onto the handgun and started to get back up. The handgun appeared to move forward towards Murashige and the officers. The officers fired several more rounds at the suspect. Murashige did not shoot since the other officers were firing. The suspect dropped to the ground. The handgun was still in the suspect's left hand or was very close to it. Officers confirmed the suspect had a gunshot wound to the head and was deceased.

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Statement of Officer J. Seydel

Officer Seydel responded to a radio call to assist. Seydel used his flashlight to illuminate the hillside area and saw a person's head and torso moving about. It appeared the person was walking back and forth on the hillside.

Officer Seydel went to the wooden fence on the south side of the yard and began to climb over it. Seydel was halfway over the fence when he heard a gunshot. Seydel thought the person on the hillside shot at him. Seydel yelled at the suspect to show his hands and walk toward the sound of Seydel's voice. The suspect did not comply and was making incomprehensible statements. It appeared he was holding an illuminated cell phone. Seydel then heard another gunshot from the suspect.

A canine handler arrived on scene and discussed a plan to deploy the police dog. Seydel warned the suspect at least twice a police canine would be released if he did not comply. The suspect replied incoherently, and then fired another gunshot. Officer Wiese deployed the police dog and the dog ran toward the suspect. Seydel lost sight of the dog but heard the suspect yelling and screaming. Wiese told the suspect to walk the dog back down the hill. Seydel heard additional gunshots from the suspect.

Officer Wiese said they needed to go and asked if they were ready. Officer Seydel followed behind Wiese and the officers began to move up the hill toward the suspect. The suspect continued to scream from the police dog's grasp and then fired off additional gunshots. Seydel got up to a block wall on the hillside and was a few yards from the suspect. He positioned behind the block wall and looked over the wall toward the suspect. The suspect was in a seated position and continually waved his gun around as it was pointed up. The suspect fired additional gunshots and Seydel saw muzzle flashes.

Initially, Officer Seydel did not think the suspect was an immediate threat, because the suspect's gun was pointed upward. However, the suspect began sporadically moving the gun around and the gun was beginning to point more in the direction of Seydel and the other officers. Seydel also realized there were houses in the area. Seydel heard someone say something like, "We need to take him." As that was said, the suspect's gun was pointed in the direction of Seydel and the other officers. Seydel did not remember who fired first, but Seydel fired about four rounds from his handgun at the suspect. The gunshots stopped and the suspect was on the ground with the pistol in his hand pointed in the direction of Seydel. It appeared the suspect was trying to get up. Seydel still perceived a threat and fired another four rounds at the suspect. The pistol dropped from the suspect's hand and landed on the ground.

Officer Seydel and the other officers moved toward the suspect. Seydel stepped on the suspect's pistol and used his foot to move the revolver away from the suspect's hand. Other officers handcuffed the suspect and then conducted a medical assessment.

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Statement of Officer J. Wiese

Officer Wiese volunteered to cover a radio call. While in route, Wiese heard units broadcast "shots fired" over the radio. A few moments later, an officer broadcast one of the occupants who ran from the vehicle was the person who fired the gun. Wiese arrived on scene and heard ASTREA broadcast the suspect was holding a cellphone and something else in his hands. The officers on the ground also broadcast similar information. Wiese activated his body-worn camera and removed his canine partner (UFO) from his vehicle.

Officer Wiese could clearly see the suspect sitting on an embankment. The suspect had a cellphone in his right hand with the flashlight activated and pointed towards the officers. The suspect appeared to be holding something in his left hand, but Weise could not see what it was. Wiese learned from another officer the gunshot previously heard came from the embankment where the suspect was currently located.

There was a group of officers standing near at the bottom of the embankment. Officer Wiese spoke to the sergeant regarding a plan to contact the suspect. They both believed the suspect was armed with a gun and agreed they should use Wiese's canine to make contact with the suspect.

An officer yelled at the suspect to drop what he had in his hands or they were going to send a police dog. Officer Wiese did not hear the suspect reply. Wiese saw the suspect was still sitting on the embankment with his phone pointed at the officers and his left hand in his lap. Wiese verbally identified himself to the suspect and commanded him to walk towards the officers or show his hands. The suspect stood up. Wiese again identified himself as a San Diego police officer and announced he had a police dog. It seemed the suspect was going to comply and walk towards them, but instead walked backwards behind a cinder block wall. Based on the suspect's actions, it appeared he was trying to escape. Wiese deployed his canine and instructed UFO to search for the suspect, who was now out of view. As UFO approached the wall, Wiese yelled for the suspect not to run. The suspect yelled back, "I'm not running." UFO turned behind the wall in a manner that made Wiese believe he located the suspect. Wiese believed the suspect was lying and actually intended to flee. Wiese then gave the bite command to UFO because he was afraid for the safety of the residents in the area should this armed suspect escape into the community.

Wiese heard UFO growling and the suspect screaming. Officer Wiese knew UFO was biting the suspect. Wiese yelled out for the suspect to bring the canine back to Wiese's location. Wiese told the suspect to do this because it was unsafe to move towards the suspect at this time, since the suspect had the tactical advantage because it was dark, they could not see him, he was believed to be armed with a gun, and he was on higher ground.

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After the third time, Officer Wiese yelled for the suspect to bring the dog to him, Wiese heard two gunshots. There was a second or two between each gunshot. Wiese thought the suspect was shooting UFO or shooting at him and the officers. Wiese did not see any muzzle flashes because they were still behind the wall, but he could hear UFO struggling with the suspect.

Officer Weise told the other officers to come with him in order to make contact with the suspect. Weise wanted to move to the suspect while the dog was distracting him. If they did not move to the suspect at this time and the dog was killed, they would then have to deal with an armed suspect who could barricade himself behind the wall, hide in the woods, or flee into the community and pose a serious danger to everyone. As they began moving towards the suspect's location, Wiese began yelling at the suspect, "Don't shoot the dog. Let me see your hands." Weise could not see the suspect when he made these commands.

Officer Wiese told the other officers his dog was "just property." He made this statement to tell the other officers not to worry about shooting the dog if lethal force was needed to protect them. Additionally, if the suspect was shooting the dog, not to allow their emotions to force them to shoot the suspect just to protect the dog. This was part of Wiese's canine handling protocol.

As they approached the suspect's location, Officer Wiese saw the suspect as he was sliding down in a seated position. UFO was biting the suspect's right leg. The suspect had a cellphone in his right hand and a handgun in his left hand. The handgun was pointed straight up in the air. The suspect looked in the direction of Wiese and the other officers and fired two rounds in the air. All of the officers then began yelling commands at the suspect. Wiese yelled for UFO to continue biting the suspect. He also yelled for the suspect to drop the gun. Wiese estimated they were about 15 yards from the suspect at that time.

A second after the suspect fired two rounds in the air he began lowering the barrel of the handgun towards the officers. The handgun was at about a 45-degree angle and pointed towards them. Officer Wiese yelled to the officers, "You've got to do it. He's pointing it at us." Wiese made this statement because he was positioned behind Sergeant Murashige and did not have his firearm out. Wiese feared the suspect was going to shoot them.

Officer Wiese began to draw his handgun just as the suspect pointed the handgun directly at them. A split second later, Wiese heard multiple gunshots. Wiese did not see who fired because he was behind Sergeant Murashige. Wiese saw the suspect lying on his back with his handgun by his side. Wiese moved out from behind Murashige and began giving the suspect verbal commands. A split second later, the suspect began to sit up with his pistol in his left hand. The suspect brought the handgun up towards them. Wiese thought the suspect was about to shoot. Wiese fired one round at the suspect. Other officers fired their weapons simultaneously at the suspect. The suspect immediately fell backward onto the ground. Wiese then instructed the other officers to handcuff the suspect.

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Law Enforcement Witnesses

There were two La Mesa Police Department officers accompanying Sergeant Murashige, and Officers Persitza, Seydel, and Wiese during this incident. They are identified in this review as Law Enforcement Witness One and Law Enforcement Witness Two.

Law Enforcement Witness One (LE1)

LE1 arrived at the scene and attempted to locate the two fleeing suspects. LE1 heard a "pop" that sounded like gunfire coming from an unknown location. LE1 broadcast this information on the radio. LE1 took cover and tried to figure out where the gunfire came from. Within minutes there was a second "pop." LE1 saw a male suspect on the hillside in the brush holding a cellular phone. The lit screen on the phone illuminated the suspect's face. The suspect moved behind the cover of a cinder block wall. The suspect was non-compliant. The suspect replied to orders to surrender by shouting something in an unknown language.

Officer Wiese made his police-canine announcements to the suspect. LE1 believed the suspect understood the admonition because the suspect began to move away from them. Wiese then released the police dog. LE1 saw a handgun in the suspect's hand and broadcast his observation over the radio. The police dog bit the suspect and "latched on." LE1 and the team of officers advanced up the hill to a position near the suspect. LE1 was at the rear of the team. Wiese was attempting to drag the police dog and the suspect back with the leash. The police dog was on the suspect for 30 to 45 seconds. LE1 lost sight of the gun in the suspect's hand at that time.

LE1 heard two or three "pops" and saw the muzzle flash of two gunshots from the pistol held by the suspect. LE1 estimated they were ten yards or less from the suspect. Immediately after the suspect fired his weapon, the four officers in front of LE1 fired their weapons. LE1 saw the suspect get hit with the gunfire. The officers moved up to the suspect. Officer Seydel stepped on the suspect's left hand as it held the pistol. LE1 rolled the suspect over and handcuffed him.

Statement of Law Enforcement Witness Two (LE2)

On his way to the call, he heard LE1 broadcast "shots fired." Once on scene, LE2 saw the suspect next to some palm trees holding something bright in his left hand that appeared to be a phone. LE2 gave several commands in English to the suspect. The suspect said something back to him, but LE2 could not understand what the suspect said. The suspect did not comply with any of the commands to approach the officers with his hands up. The suspect moved out of sight, behind a tree. LE2 heard a "pop" that sounded like a gunshot from a small caliber handgun. LE2 thought the suspect was shooting at the officers. The suspect came back into view and another officer commanded the suspect to show his hands. LE2 saw a cell phone in the suspect's left hand, but could not see his right hand. The suspect moved out of view again and LE2 heard another gunshot. LE2 estimated he heard three gunshots. Officer Persitza then stated he could see a gun in the suspect's right hand.

Officer Wiese gave the suspect commands to surrender or else the dog would be released. The suspect stood up and Wiese released his dog. The suspect was walking northwest and went

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partially behind a wall. LE2 heard a scream and saw the suspect's hand go up with a gun in it. LE2 then saw a muzzle flash along with the sound of a gunshot. LE2 believed the dog bit the suspect. LE2 was telling the suspect or dog to "bring him to me." LE2 heard another shot from the area of the suspect.

The other officers formed an arrest team and moved up the hill toward the suspect. LE2 followed them to provide cover with his rifle. LE2 was about five feet behind the group and heard them giving the suspect commands to show his hands and drop the gun. LE2 then heard shots fired, but could not determine how many shots were fired or who fired them. LE2 did not fire because he could not see the suspect.

Statement of Co-Suspects

Co-Suspect One (CS1) admitted he was the driver of the vehicle and explained Co-Suspect Two was in the front passenger seat, while Mr. Ochoa-Bautista was in the back seat. CS1 stated he fled from police because he had a warrant for his arrest, he had been smoking marijuana and did not possess a driver's license. CS1 knew Ochoa-Bautista had a pistol because Ochoa-Bautista told him he had a gun. CS1 ran from the car and escaped apprehension on that night and did not witness the shooting.

Co-Suspect Two (CS2) confessed he ran from the car at the end of the pursuit because he had been smoking marijuana and suspected the car driven by Co-Suspect One was stolen. CS2 also admitted to knowing Mr. Ochoa-Bautista was armed with a pistol. CS2 said he heard, "a little gunshot" as he fled, continued running, and then hid in some bushes for about 15 to 20 minutes before he heard the sound of more gunshots. CS2 was captured about three blocks away from the scene of the shooting.

Statement of Civilian Witnesses

There were over 30 civilian residents in the vicinity of the officer-involved shooting. Only three civilians said they saw and heard the events of the actual shooting.

Civilian Witness One (CW1) was awakened by police activity outside of CW1's residence. CW1 saw officers focus their attention on a male suspect across the street. The officers told the suspect, "Come down. Show your hands." CW1 then heard one to two gunshots. The officers continued to tell the second suspect to show his hands and to come down. The suspect repeated what the officers were saying to him. The suspect did not appear to comply with the orders the officers were giving. CW1 did not see the suspect carrying anything, but heard one or two gunshots and believed the suspect fired at the three officers gathered at the bottom of the hill. CW1 did not think the officers fired at the suspect because there was no muzzle flash from any of the officer's weapons. The officers repeated their demands for the suspect to come down. One officer told the suspect they were going to send the dog. The officers sent the police dog up the hill. The suspect screamed and fired a shot. The officers headed up the hill and CW1 heard a shot or two being fired at the officers. One of the officers flinched. The officers then returned fire firing about five shots. CW1 was able to see the suspect had ducked down.

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Civilian Witness Two (CW2) resided with CW1. CW2 awoke to the sound of sirens. CW2 looked out the window and saw the suspects' sedan had collided with a fence at the dead end of the street. CW2 saw a suspect jump out of the sedan and run west up the hill. An officer was telling the suspect to show his hands. The suspect would not comply. CW2 heard the canine handler arrive with his dog. The officer told the suspect they would send the dog after him. Officers were looking for the suspect with their flashlights and yelling, "Show me your hands. If you don't, we are going to send the dog." The suspect yelled back to the officers, "What? What?" The officers repeated, "Show me your hands." CW2 then heard the suspect screaming after the officer released his dog. The officer told the suspect to bring the dog back down, but the suspect just sat there. CW2 then heard gun shots. CW2 believed at least five shots fired. CW2 took photos through the window of their residence; however they did not capture the shooting incident.

Civilian Witness Three (CW3) was awakened by the sound of sirens nearby their residence. CW3 looked out the window and saw police vehicles and officers near a vehicle collision at the dead end of the street. On the hill behind CW3's backyard, CW observed a male with either a flashlight or a gun in his right hand standing behind a cinder block wall. CW3 heard a popping noise, which sounded quieter than a gunshot. CW3 then saw a police dog deploy and bite the suspect behind the cinder block wall. The suspect tried to get the dog off of his left leg while the police yelled multiple times at the suspect to put his hands up. The suspect yelled and said the dog was hurting him. The suspect pointed his hand out. CW3 saw either a small gun or a flashlight in his right hand. The police continued yelling commands to the suspect to put his hands up and come out. CW3 then heard at least ten gunshots. CW3 has closed circuit cameras monitoring their residence. The cameras did not capture the shooting incident.

Investigation

The crime scene was secured, photographed, and investigated by Sheriff's Department Homicide detectives. All deputies' reports, crime-scene investigators' reports, audio-recorded witness interviews, witness cellphone pictures and videos, closed-circuit security video were reviewed. The cell phone held by Mr. Ochoa-Bautista received damage from gunfire, rendering it inoperable. No data could be retrieved from it. The shooting event was captured on the camera worn by San Diego Police Officer Wiese.

The investigation revealed Mr. Ochoa-Bautista was armed with a .32 caliber Colt revolver. The revolver contained six fired .32 caliber cartridge casings. Sgt. Murashige fired one round from his AR-15 rifle. Officer Persitza fired two rounds from his shotgun. Officer Seydel fired eleven rounds from his .40 caliber Glock semi-automatic pistol. Officer Wiese fired one round from his 9 mm Sig Sauer semi-automatic pistol.

The autopsy of Mr. Ochoa-Bautista documented one shotgun wound to the torso of Ochoa-Bautista and five gunshot wounds to the torso, head and right thigh. Toxicological studies performed on blood collected from Ochoa-Bautista tested positive for cannabinoids.

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Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The purpose of the District Attorney's review is to provide an independent analysis and determine if the shooting was legally justified. This review does not address compliance with the policies and procedures of any law enforcement agency, ways to improve training, or any issues related to civil liability.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person whom she has reasonable cause to believe has committed a public offense.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.'”

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor* (1989) 490 U.S. 386, citing *Terry v. Ohio*, 392 U.S., at 20-22.

In addition to any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if she reasonably believed that she or someone else was in imminent danger of suffering bodily injury, believed that the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger.

Conclusion

Mr. Ochoa-Bautista ran from a car involved in a vehicle chase with police officers. He positioned himself on a hillside, next to some residences, and above the location of the officers. Ochoa-Bautista hid behind a cinderblock wall and fired rounds from his revolver. He ignored

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multiple orders by law enforcement to drop his revolver and surrender. A police canine was deployed. Ochoa-Bautista refused to surrender and instead fired more shots in the presence of officers. An arrest team approached to take Ochoa-Bautista into custody. Ochoa-Bautista then pointed his revolver toward the officers. Based on these circumstances, Sergeant K. Murashige, and Officers T. Persitza, J. Seydel, and J. Wiese fired back in their own defense and in the defense of others. Therefore, they bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,



SUMMER STEPHAN
District Attorney
County of San Diego

SS:eg

cc: Captain Mike Hastings
San Diego Police Department

Captain Wes Morris
SDPD Internal Affairs

Captain Mike McClain
San Diego Sheriff's Department

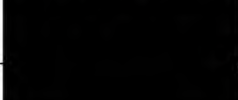
Lt. Christina Bavencoff
SDSO Internal Affairs

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Reporting Officer: Jack R. Pearson Sergeant ID: 5282 Division: Internal Affairs

Approved By:  4882 Date of Report: 10/11/18

**San Diego Police Department
Investigator's Report**

Date of Incident: August 24, 2017
Time of Incident: 0123 Hours
Location of Incident: 2100 Rebecca Way, Lemon Grove, CA 91945
Subject: Officer Involved Shooting Investigation I.A. #2017-0660

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SUBJECT OFFICER: WIESE, Jonathan D., Police Officer II, ID #5525
Date of Hire: 11/30/1998
S.D.P.D., Operational Support/Canine – 2nd Watch
[REDACTED]
W/M, DOB: [REDACTED]
Ht: 6'0" / Wt: 195 lbs.

WEAPON USED: Sig Sauer, Model P226, 9mm caliber Semiautomatic pistol, serial [REDACTED]

SUSPECT: OCHOA-BAUTISTA, Isaias Raziell
[REDACTED]
H/M, DOB: 06/18/1998
Ht: 5'9 ½" / Wt: 166 lbs.

WEAPON USED: Colt, revolver, .32 caliber pistol, serial number- NONE NOTED

Reporting Officer: Jack R. Pearson, Sergeant ID: 5282 Division Internal Affairs

Approved by: _____ Date of Report: _____

SUMMARY:

La Mesa Police Officers (Case # 17-033392) were involved in a pursuit which came into the Spring Valley/Lemon Grove area. La Mesa Police requested assistance from SDSO and Sergeant Murashige (2552) became the second vehicle in the pursuit. The pursuit ended at 2100 Rebecca Way in the City of Lemon Grove, where three male occupants fled on foot. Two suspects fled over a fence heading south west and one fled going south east. Officers and Sergeant Murashige went after the two suspects going south west. La Mesa Police Officer Seydel (1268) looked over the fence and heard what he believed to be a gun shot. Sergeant Murashige broadcast over his radio, "Shots Fired".

La Mesa Police Officers Seydel, Persitza (1273), Gaytan (1244), Sergeant Herrin (1202), Sheriff Sergeant Murashige and San Diego Police K9 handler Wiese (5525) were all present when they heard gun shots coming from a hillside behind the fence where the two suspects had jumped over. They observed what appeared to be a Black or Middle Eastern male with curly hair holding a cell phone. The phone illuminated the males face. A San Diego Police K9 was released when more gun shots came from the suspects' area. La Mesa Police Officers Seydel and Persitza, Sheriff's Sergeant Murashige, and San Diego Police K9 handler Wiese returned fire, striking the suspect.

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Approved by: Lt. Paul Phillips #4882 Date of Report: October 10, 2018

INVESTIGATION:

On August 24, 2017 at 1430 hours, Internal Affairs Lieutenant Jason WEEDEN #5563 assigned me Officer Involved Shooting Special Investigation, SDSO Case # 17144086, which was investigated by San Diego Sheriff's Department Homicide Team. The case file included a copy of the Internal Affairs Shooting Incident Report that had previously been completed by Sergeant SAYASANE.

On September 6, 2017 at 1300 hours, I received (1) CD-ROM's number PD17-0266, containing the communication tapes from this incident and CAD printouts for Incident History number 17-080038930. I placed the CD-ROM and documents in the case file.

On September 7, 2017 at 1503 hours, I printed the Human Resources Data sheet for Officer Jonathan WIESE #5525 and placed the copies in the case file.

On September 7, 2017, at approximately 1520 hours, I accessed the San Diego Police Range database and printed the Firearms Proficiency qualification record for Officer WIESE. The qualification record showed Officer WIESE passed his annual qualification shoot with his primary weapon, a Sig Sauer P226, serial number [REDACTED] on September 26, 2016, I placed a copy of the Police Range qualification record in the case file.

On October 10, 2017, at approximately 0900 hours, I went to the San Diego Regional Training Center In-Service Training Office and viewed Officer WIESE'S training file. Officer WIESE graduated from the San Diego Regional Police Academy on June 25, 1999. I placed a copy of Officer WIESE'S Commission on Peace Officer Standards and Training Profile report in the case file.

On April 13, 2018, I received the Homicide Special Investigation Blu-ray Disc, from the San Diego Sheriff's Department (SDSO), Sergeant Karen BLOCH, Officer Involved Shooting, SDSO case #17144086 and reviewed the information.

SDSO Forensic Evidence Technician SEEKER completed the Laboratory Service Report. Officer WIESE carried a Sig Sauer, Model P226, 9mm, Semi-Auto handgun and two spare, 15 round magazines for his weapon. Officer WIESE used Department issued Luger FC 9mm ammunition. SDSO Forensic Evidence Technician RACICOT recovered 1 expended Luger FC 9mm cartridge from the scene.

SDSO Forensic Evidence Technician SEEKER examined Officer WIESE'S service pistol and magazines and found the capacity of his pistol in the "Hot Loaded" condition (one cartridge in the chamber and fourteen cartridges in the seated magazine) to be fifteen cartridges. The total capacity of this model pistol with the two extra magazines is forty-six cartridges. SDSO Forensic Evidence Technician SEEKER found one cartridge in the weapon's chamber, fourteen cartridges in one magazine recovered from the magazine inserted in the handgun, 15 cartridges in a second magazine recovered from Officer WIESE'S duty belt and 15 cartridges in a third magazine recovered from Officer WIESE'S duty belt. The total capacity of forty-six cartridges minus the forty-five cartridges received with the pistol equals one

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cartridge. This would indicate that Officer WIESE fired one time which accounts for the one round fired by Officer WIESE per his statement.

This Officer Involved Shooting occurred on August 24, 2017. The San Diego Sheriff's Department Homicide Unit conducted a criminal investigation of the shooting then forwarded the investigation to the District Attorney's Office for their criminal investigation and review. On May 3, 2018, the District Attorney sent a letter clearing Officer WIESE of any criminal wrong doing. Under Government Code 3304 (d)(2)(A) this case was tolled from October 10, 2017 to May 3, 2018 due to the above listed criminal investigation by San Diego Sheriff's Department Homicide Unit and the District Attorney's Office.

On May 3, 2018 at 0825 hours, I received a copy of the findings letter signed by Summer STEPHAN, District Attorney for the County of San Diego. The San Diego County District Attorney's office found that Officer WIESE fired in self-defense and therefore bared no criminal liability for his actions. I placed a copy of the letter in the case file.

The statements in this investigation were obtained from the San Diego Sheriff's Department Homicide Investigation Case #17144086. The witnesses and officers were not interviewed by Internal Affairs.

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CONCLUSIONS:

The actions of Officer WIESE #5525 are **WITHIN POLICY** per San Diego Police Department Procedure 1.05 (Firearms Policy), Section III, B, 3, dated June 20, 2017, which states in part:

B. No officer shall discharge a firearm in the performance of duty except:

2. When the officer has a reasonable belief that a subject (or an animal) poses an imminent threat of death or serious bodily injury to the officer or another person;
3. When necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect's escape would pose an imminent threat to the officer or others;

San Diego Police Department Procedure 1.04, Use of Force, Section III, dated September 11, 2015, states in part:

The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its personnel in the use of the safest, most humane restraint procedures and force options currently known. The Department seeks to demonstrate integrity, and make decisions that are fair, respectful, lawful, and based on good judgment.

In the performance of their duties, officers may encounter situations where the use of force is reasonable in order to affect a detention or arrest, to overcome resistance, or to protect themselves or others. Force, as authorized by Penal Code section 835a, and as set forth in this policy, may be used in those situations. The decision to use deadly force in response to an imminent threat of death or serious bodily injury to the officer or another person is one of the most critical decisions an officer will ever be called upon to make.

Only force that is reasonable to overcome resistance may be used to effect a detention or an arrest, or take a mentally ill or emotionally disturbed person into protective custody. The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an

imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

Penal Code section 835a authorizes an officer to use reasonable force to make a lawful arrest, prevent an escape, or to overcome resistance. Officers are not required to retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested.

The evaluation of an officer's use of force will be undertaken from the perspective of a reasonable officer on the scene, not through the 20/20 vision of hindsight. The central inquiry in every use of force case is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer.

San Diego Police Department Procedure 1.04, Use of Force, Section IV, E, dated September 11, 2015, states in part:

E. Deadly Force - force that creates a substantial risk of causing death or serious bodily injury.

On August 24, 2017, La Mesa Police Officers (Case # 17-033392) were involved in a pursuit which came into the Spring Valley/Lemon Grove area. La Mesa Police requested assistance from SDSO and Sergeant Murashige (2552) became the second vehicle in the pursuit. The pursuit ended at 2100 Rebecca Way in the City of Lemon Grove, where three male occupants fled on foot. Two suspects fled over a fence heading south west and one fled going south east. Officers and Sergeant Murashige went after the two suspects going south west. La Mesa Police Officer Seydel (1268) looked over the fence and heard what he believed to be a gun shot. Sergeant Murashige broadcast over his radio, "Shots Fired".

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On August 24, 2017, SDSO Homicide Detective D. MURTAUGH and Detective G. CRYSLER, interviewed Officer Jonathan WIESE #5525, with his Attorney, Amy MARGOLIES. The interview was conducted at the Rancho San Diego Sheriff's Station.

Officer WIESE stated the following during his homicide interview:

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At about 0200 hours, I was on patrol near Balboa Park when I heard a broadcast on "LE South Command." The broadcast indicated La Mesa Police were in a vehicle pursuit in Spring Valley and requested K-9 assistance. Based on the other police activity around the area, I knew I was the closest available K-9. I drove towards Spring Valley.

As I passed Lemon Grove Avenue, I heard broadcasts that the suspect's vehicle was at 2100 Rebecca Way. The vehicle was stopped at this location and the occupants had fled on foot. About a minute later "shots fired" was broadcast over the radio. I activated my overhead lights and siren and continued responding to the scene. A few moments later, another officer broadcasted that one of the occupants that ran from the vehicle was the person who fired the gun. I notified SDPD dispatch and my supervisor that I was responding to the pursuit in Spring Valley.

I contacted an officer at the scene who was standing near the suspect's vehicle. I asked the officer where the suspect went. The officer pointed west toward a dirt embankment that was located on the south side of the wooden fence. The embankment was made up of trees and vegetation. A two-foot deep drainage canal was located on the south side of the fence and ran up the embankment.

I looked up the embankment and saw the suspect sitting on the lip of the canal. His feet were inside the canal. He was turned towards me and I could see a cell phone in his right hand. The flashlight of the phone was on and pointed towards me. It appeared he was video recording us. His left hand was resting in his lap, it appeared he was holding something in his left hand.

I confirmed with the officers on scene that the subject I observed was the same subject who ran from the car and fired the gun. The sergeant and I discussed a plan of action. The sergeant wanted me to use my K-9 to contact the suspect.

I began giving commands to the suspect. He stood up and appeared as if he was going to comply. But instead he walked backwards behind a cinder block wall. I believed he was trying to escape. I deployed my K-9 and instructed him to search. I gave my K-9 the bite command because I didn't want the suspect to get into the community armed with a gun.

I heard my dog growling and the suspect screaming so I knew my K-9 was biting the suspect. I told the suspect to walk towards me with my dog. It was unsafe for us to move towards him because he had the tactical advantage. After the third time I yelled for him to bring the dog and come towards us I heard two gunshots. I wasn't sure if he was shooting at us or my K-9.

I had a team of officers with me so we formed a "V" shaped formation and moved forward towards the suspect's location. I began yelling for him not to shoot the dog and let me see his hands.

As we approached I could see the suspect. He was sliding down toward the concrete canal. He was in a seated position. The K-9 was biting his leg. He had a cellphone in his right hand and a

handgun in his left hand. The gun was pointed straight in the air. When the suspect noticed we were there he fired two rounds into the air. We were about 15 feet away from the suspect at this time. After he fired the rounds in the air he began lowering the handgun towards the officers. I didn't have my gun out at the time. I told the officers "You got do it, he's pointing it at us." The gun was now at about a 45 degree angle and pointed directly at us. I drew my handgun. A second later I heard multiple gun shots.

The suspect was now lying on his back with the handgun by his side. I began giving him verbal commands. He began to sit up. He had the handgun in his left hand. He brought the gun up towards us. Fearing he was going to shoot and kill me or another officer I fired one round. Other officers fired also. The suspect immediately fell backward onto the ground. The gun was now on the ground and the suspect was no longer grasping it. We moved up and were able to get the suspect handcuffed.

SDSO Forensic Evidence Technician SEEKER completed the Laboratory Service Report. Officer WIESE carried a Sig Sauer, Model P226, 9mm, Semi-Auto handgun and two spare, 15 round magazines for his weapon. Officer WIESE used Department issued Luger FC 9mm ammunition. SDSO Forensic Evidence Technician RACICOT recovered 1 expended Luger FC 9mm cartridge from the scene.

The actions of Officer WIESE to use deadly force were reasonable, legal and **WITHIN** Department Policy and Procedure.

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DOCUMENTATION:

The results of this investigation are based on the following items:

1. SDPD Shooting Incident Report authored by Internal Affairs Sergeant Dan SAYASANE #5680
2. CAD printouts for incident #17-080038930
3. SDPD Firearms Proficiency report for Officer WIESE
4. California Commission on Peace Officer Standards and Training report for Officer WIESE
5. (1) CD-R containing the Communications Research tapes for the incident
6. (1) Blue Ray Disc containing the Digital Homicide Investigation
7. Officer WIESE'S BWC footage

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